

Supreme Court, U.S.
① FILED
05-939 JAN 17 2006

No. 04-4045

OFFICE OF THE CLERK

In the
Supreme Court of the United States

DANIEL HOAGLAND, KAREN HOAGLAND, HOAGLAND
FAMILY LIMITED PARTNERSHIP AND CLEAR LAKE
MANAGEMENT CORPORATION,

Petitioners,

v.

TOWN OF CLEAR LAKE, INDIANA, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

DANIEL HOAGLAND
KAREN HOAGLAND
HOAGLAND FAMILY LIMITED
PARTNERSHIP AND CLEAR LAKE
MANAGEMENT CORPORATION
1114 LAKE DRIVE, CLEAR LAKE
FREMONT, IN 46737
(260) 489-5990
(260) 489-5685 FAX

Petitioners pro se

QUESTIONS PRESENTED

Is a non-proprietor municipality federally preempted from:

- 1. Enacting a zoning ordinance limiting and/or prohibiting Petitioners from using their pre-existing, licensed heliport to land their helicopter, contrary to the Federal Aviation Act's express preemption of such local governmental laws or regulations relating to an air carrier's price, route or service set forth in 49 U.S.C. § 41713(b)(1)?**
- 2. Closing an existing, state certified, federally endorsed landing facility that was legally established at a time when there was no local ordinance regulating landing facilities by subsequently enacting a post facto zoning ordinance?**
- 3. Enacting a zoning ordinance that requires owners of existing landing facilities to "provide proof of FAA authority to the zoning inspector and a copy of the results of any flight review (including FAA airmen medical exams) within 60 days of each flight review"?**
- 4. Enacting a zoning ordinance that only closes existing landing facilities but in no way prohibits or regulates the siting, or the establishment of new facilities?**
- 5. Enacting a zoning ordinance that closes existing landing facilities that are based on private property while the ordinance legislative history clearly shows the intentional exclusion of the private Clear Lake Seaplane base that is located on the public waters of Clear Lake?**

PARTIES TO THE PROCEEDINGS

Petitioners are Daniel Hoagland, Karen Hoagland, Hoagland Family Limited Partnership and Clear Lake Management Corporation.

The Petitioners, by and through Daniel Hoagland, appear pro se and are filing pro se to represent their interests before the United States Supreme Court. There is no publicly held interest involved.

Respondents are Town Of Clear Lake, Indiana, Robert D. Troll, Derold H. Covell, Emma J. Brown, William Geiger, Joe Driver, and Thomas Reith, individually and in their official capacity as current and former members of the Clear Lake Town Council and Plan Commission, Thomas Wehrenberg, in his official capacity as a former member of the Clear Lake Town Council and Plan Commission, Richard Allen Lehman, individually and in his official capacity as Town of Clear Lake Marshal and Clear Lake Zoning Inspector, Julie Zachrich, Barb Disser, Alan B. Larue and Thomas Reith, individually and in their official capacity as current and former members of the Board of Zoning Appeals of the Town of Clear Lake, Indiana.

INFORMATION REQUIRED BY RULE 29.6

There is no parent corporation or publicly held company owning 10% or more of the stock in any corporation that is, or has been a party to any of these proceedings.

TABLE OF CONTENTS

	Page(s)
Questions presented	i
Parties to the Proceedings and Rule 29.6 Statement	ii
Table of Contents	iii
Table of Authorities	v
Opinions and Orders Below	1
Jurisdiction	1
Constitutional and Statutory Provisions Involved	2
Statement of the Case	3
Reasons for Granting the Writ	8
A. The Court of Appeals' Decision Conflicts with this Courts' Decision in <i>City of Burbank v.</i> <i>Lockheed Air Terminal, Inc.</i> and <i>American</i> <i>Airlines v. Wolens</i>	8
B. The Court of Appeals' Decision Conflicts With Federal Aviation Regulations and FAA Record of Decisions including Piedmont Triad International Airport, City of Greensboro, North Carolina, and Lambert-St. Louis International Airport	14

C. The Court of Appeals' Decision Creates a Split Between the Circuits	16
D. The Court of Appeals' Decision Has Decided an Important Question of Federal Law and Affects Air Commerce	29
Conclusion	30
Appendix	
Appendix A	
United States Court of Appeals For the Seventh Circuit Order Denying Rehearing October 18, 2005	1a
Appendix B	
The United States Court of Appeals For the Seventh Circuit Opinion July 18, 2005	3a
Appendix C	
The United States District Court for the Northern District of Indiana, Fort Wayne Division Memorandum of Decision and Order October 28, 2004	14a

TABLE OF AUTHORITIES

Cases

United States Supreme Court:

<i>American Airlines v. Wolens</i> , 513 U.S. 219, 115 (1995)	iii, 3, 8, 13, 15
<i>Cipollone v. Liggett Group, Inc.</i> , 505 U.S. 504 (1992)	11, 12
<i>City of Burbank v. Lockheed Air Terminal, Inc.</i> , 411 U.S. 624 (1973)	iii, 3, 9, 11, 22
<i>Egelhoff v. Egelhoff ex rel. Breiner</i> , 532 U.S. 141 (2001)	12
<i>Lorillard Tobacco Co. v. Reilly</i> , 533 U.S. 525 (2001)	13
<i>Maryland v. Louisiana</i> , 451 U.S. 725 (1981)	2, 14
<i>Morales v. TWA</i> , 504 U.S. 374	12, 13
<i>Northwest Airlines, Inc. v. Minnesota</i> , 322 U.S. 292 (U.S. 1944)	9, 27
<i>Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.</i> , 469 U.S. 189 (1985)	11
<i>United States v. Causby</i> , 328 U.S. 256 (1946)	26

Other Circuit Courts of Appeal:

<i>Abdullah v. American Airlines, Inc.</i> , 181 F.3d 363 (3d Cir. 1999)	3, 23
<i>Botz v. Omni Air Int'l</i> , 286 F.3d 488 (8 th Cir. 2002)	13
<i>Burbank-Glendale-Pasadena Airport Authority</i> <i>v. Los Angeles</i> , 979 F.2d 1338 (9 th Cir. 1992)	3, 21, 22
<i>Condor Corporation v. City of St. Paul</i> , 912 F.2d 215 (8 th Cir. 1990)	3, 24
<i>French v. Pan Am Express, Inc.</i> , 869 F.2d 1 (1 st Cir. 1989)	3, 23, 24
<i>Gustafson v. City of Lake Angelus</i> , 76 F.3d 778 (6 th Cir. 1996), <i>cert. denied</i> 519 U.S. 823 (1996)	3, 25
<i>Kohr v. Allegheny Airlines, Inc.</i> , 504 F.2d 400 (7 th Cir. 1974)	27
<i>Pirollo v. Clearwater</i> , 711 F.2d 1006 (11 th Cir. 1983)	4, 24
<i>Travel All Over the World v. Saudi Arabia</i> , 73 F.3d 1423 (7 th Cir. 1996)	13
<i>United Airlines v. Mesa Airlines</i> , 219 F.3d 605 (7 th Cir. 2000)	13
<i>Vorhees v. Brown</i> , 134 F.3d 375 (7 th Cir. 1998)	25

<i>Vorhees v. Naper Aero Club</i> , 272 F.3d 398 (7 th Cir. 2001)	25, 28
---	--------

Federal District Courts:

<i>Gustafson v. City of Lake Angelus</i> , 856 F. Supp. 320, <i>aff'd in part, rev'd in part</i> , (E.D. Mich., 1993)	24
---	----

<i>Price v. Charter Township of Fenton</i> , 909 F. Supp. 498 (E.D. Mich. 1995)	24, 25
--	--------

Other State Courts:

<i>Bethman v. City of Ukiah</i> , 216 Cal.App.3d 1395 (1989)	29
---	----

<i>City of Burbank v. Burbank-Glendale-Pasadena Airport Authority</i> , 85 Cal. Rptr. 2d 28 (Cal. Ct. App. 1999)	29
---	----

<i>City of Lake Angelus v. Mich. Aero. Comm'n</i> , 676 N.W.2d 642 (Mich. Ct. App. 2004)	24
---	----

<i>Greater Westchester Homeowners Association v. City of Los Angeles</i> , 603 P.2d 1329 (Cal. 1979)	28
---	----

Statutes

28 U.S.C. § 1254(1)	1, 2
28 U.S.C. § 1331	8, 2
49 U.S.C. § 1508(a)	2, 26
49 U.S.C. § 40101	2, 5, 8
49 U.S.C. § 40102(a)(2)	2, 3, 13, 16

49 U.S.C. § 40102(a)(30)	2, 26
49 U.S.C. § 40103	2, 12
49 U.S.C. § 40103(a)	2, 26
49 U.S.C. § 40103(b)(1)	2, 28
49 U.S.C. § 41713	2, 5, 8, 12
49 U.S.C. § 41713(b)(1)	i, 2, 12, 14
49 U.S.C. § 47102(2)	2, 12
U.S. Constitution, Art. VI, Cl. 2	2

Other Authorities

Air Commerce Act of 1926, Pub. L. No. 69-254, 44 Stat. 586 (1926)	39
Civil Aeronautics Act of 1938, Pub. L. No. 75-706, 52 Stat. 973 (1938)	39
Federal Aviation Regulations Far 91.13(B)	15

Administrative Decisions

FAA Record of Decision, Piedmont Triad International Airport, City of Greensboro, North Carolina December 31, 2001, Located at: http://www.faa.gov/arp/app600/ 5054a/ORDgso.HTM	iii, 4, 14
FAA Record of Decision, Lambert-St. Louis International Airport, September 30, 1998, located at http://www.faa.gov/arp/ace/stl/stl.htm . .	iii, 4, 14, 15

PETITION FOR A WRIT OF CERTIORARI

Petitioners, pro se, respectfully request this Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this action on July 18th, 2005.

OPINIONS AND ORDERS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is published as *Hoagland v. Town of Clear Lake*, 415 F.3d 693 (7th Cir. 2005), rehearing denied, rehearing en banc denied as *Hoagland v. Town of Clear Lake*, 2005 U.S. App. LEXIS 22495 (7th Cir. Oct.18, 2005). It is reproduced in the Appendix at 1a. Petition for rehearing was denied without opinion. The unpublished order issued October 18, 2005. The opinion of the District Court denying Petitioners' motion for summary judgment and granting the Respondents' motion for summary judgment is published as *Hoagland v. Town of Clear Lake*, 344 F. Supp. 2d 1150 (N.D. Ind. 2004). It is reproduced in the Appendix at page 14a.

JURISDICTION

The United States Court of Appeals for the Seventh Circuit issued its opinion on July 18, 2005 and its order denying rehearing on October 18, 2005. (Apx. 3a and 1a.) Jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions involved in this case are:

- Article VI of the Constitution, The Supremacy Clause, provides in pertinent part: that the laws of the United States "shall be the supreme Law of the Land; ... any thing in the Constitution or Laws of any state to the Contrary notwithstanding." Art. VI, cl. 2. It has long been settled that state law that conflicts with federal law is "without effect." *Maryland v. Louisiana*, 451 U.S. 725, 746, 101 S. Ct. 2114, 68 L. Ed. 2d 576 (1981).
- U.S. Constitution, Art. VI, Cl. 2

The statutory provisions involved in this case are:

- 28 U.S.C. § 1254(1)
- 28 U.S.C. § 1331
- 49 U.S.C. § 1508(a)
- 49 U.S.C. § 40101
- 49 U.S.C. § 40102(a)(2)
- 49 U.S.C. § 40102(a)(30)
- 49 U.S.C. § 40103
- 49 U.S.C. § 40103(a)
- 49 U.S.C. § 40103(b)(1)
- 49 U.S.C. § 41713
- 49 U.S.C. § 41713(b)(1)
- 49 U.S.C. § 47102(2)

STATEMENT OF THE CASE

Petitioners are seeking review of the Seventh Circuit Court of Appeals ruling which held that a non-proprietor municipality is not federally preempted from closing an existing, state certified, federally endorsed landing facility that was legally established at a time when there was no local ordinance prohibiting or regulating landing facilities, by subsequently enacting a post facto zoning ordinance. The Seventh Circuit made the decision in spite of the fact that the new zoning ordinance requires owners of existing landing facilities to "provide proof of FAA authority to the zoning inspector and a copy of the results of any flight review (including FAA airmen medical exams) within 60 days of each flight review." And even in spite of the fact that the District Court has already recognized that the Respondents did not dispute the fact that Petitioners qualify as an air carrier within the meaning of the Federal Aviation Act, 49 U.S.C. § 40102(a)(2). (Apx C p. 22a)

Petitioners believe the Seventh Circuit's ruling conflicts with the rulings of this Court in *American Airlines v. Wolens*, 513 U.S. 219, 115 S. Ct. 817, 130, L. Ed.2d 715 (1995) and *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 93 S. Ct. 1854, 36 L. Ed. 2d 547 (1973).

Petitioners also believe the Seventh Circuit's ruling conflicts with the rulings of other Circuit Court of Appeals, in *Abdullah v. American Airlines, Inc.*, 181 F.3d 363 (3rd Cir. 1999); *Burbank-Glendale-Pasadena Airport Authority v. Los Angeles*, 979 F.2d 1338 (9th Cir. 1992); *Condor Corporation v. City of St. Paul*, 912 F.2d 215 (8th Cir. 1990); *French v. Pan Am Express, Inc.*, 869 F.2d 1 (1st Cir. 1989); *Gustafson v. City of Lake Angelus*, 76 F.3d 778 (6th Cir. 1996), cert.